taxable in the respondents' hands, we would allow the appeal by remitting the matter to the trial court to assess the damages on the basis that account ought to be taken of the income tax the respondents would have had to pay if in fact it had been received as rent. We would not alter the order as to costs and we would order that the respondents have the costs of this appeal.

However, in our judgment the appellants' main contention must also fail. It is to be observed that in *Gourley's* case the decision proceeded on the agreed assumption that the damages awarded would not be taxable in the plaintiff's hands and in *Hall & Co. Ltd.* v. *Pearlberg* the official referee expressly held that the £650 awarded as damages in lieu of rent was not liable to tax under the English Income Tax Act 1952.

In the present case counsel for the appellants relied on *Hall & Co. Ltd.* v. *Pearlberg* as direct authority that damages awarded in lieu of rent would not be liable to income tax. In our opinion this reliance is unsound simply because our income tax law is different from the English income tax laws. However, the question remains whether or not the amount awarded to the respondents as mesne profits would be liable to income tax.

It is not disputed that the trial judge applied the correct principle in arriving at the amount he awarded *viz.* the rent at which the respondents would have been able to let the premises had the appellants complied with the Notice to Quit. Liability to income tax is imposed by section 10 of the Income Tax Act (Cap. 141). The material provisions of section 10 read: —

"10.—(1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of —

(f) rents, royalties, premiums and any other profits arising from property;"

In our opinion, it is clear that the damages awarded in the present case undoubtedly fall within the expression "and any other profits arising from property" in section 10(1)(f).

For all these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

RE S. S.

[O.C.J. (Winslow J.) November 14, 1974]
[Singapore — Adoption Petition No. 209 of 1973]

Family Law — Adoption of child — Consent of natural father — Whether consent can be dispensed with — Adoption of Children Act (Cap. 43), s. 3(4).

In this case the petitioners applied for the adoption of a child. The female petitioner had given birth to the girl out of wedlock. Subsequently she was married to the natural father of the girl, but the marriage was an unhappy one and the female petitioner obtained a divorce on the ground of cruelty. Custody of the child was awarded to her. After the decree was made absolute the female petitioner married the male petitioner and they thereupon jointly applied to adopt the child. The natural father withheld his consent and the question which arose was whether the consent of the natural father could be dispensed with. The facts as found by the learned trial judge showed that the natural father had shown himself completely unfit to continue in the role of a father of whom his child could ever be justifiably proud. The girl was at the date of the petition about 8 years and 10 months of age.

Held: in all the circumstances of this case the consent of the natural father should be dispensed with and the petitioners be granted their petition for the adoption of the child.

Cases referred to:-

(1) *Re W (an infant)* [1971] All E.R. 49.
(2) *Hitchcock* v. *W.B.* [1952] 2 All E.R. 123.
(3) *Re Adoption Nos. 60-09-097014 and 62-09-027718* [1972] 1 W.L.R. 759.

ADOPTION PETITION.

V. Ramakrishnan for the petitioners.

Syed Hassan Almenoar for the respondent.

Patrick Koh Keng Boon (State Counsel) for the Attorney-General and the Assistant Director of Social Welfare.

Winslow J.: This petition for adoption of the child in question came on for hearing before me in Chambers and was heard at the same time as an application on the part of the petitioners to dispense with the father's consent under paragraph (c) of the proviso to subsection (4) of section 3 of the Adoption of Children Act (Cap. 43) which empowers the court to dispense with his consent if the court is satisfied, *inter alia*, that he is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

The undisputed facts are that the female petitioner, who is the natural mother of the girl to be adopted, gave birth to her out of wedlock. The mother married the natural father some 8 months thereafter when he reached the age of 21 years, his own father having previously refused to consent to such marriage. The girl is now about 8 years and 10 months of age.

I find that the marriage from its inception was an unhappy one and after a few years of a most turbulent relationship involving scenes of violence and assault on the mother by the father she left him in October 1970 taking the child with her to stay with her own mother. Eventually she went to live with the male petitioner in early 1971 on discharge from hospital after a nervous breakdown resulting from the distress caused by the removal of the girl from her care by the natural father who shortly afterwards returned the girl to her at her request to allay her distress. He harboured hopes of becoming reconciled with his wife

at that stage but instead of doing something constructive about it he drifted away from her life although he now claims that he was deprived by the mother of the opportunity of doing what he could for the child.

She divorced him for cruelty in July 1972 in an uncontested suit, which I have since discovered, was the result of a decree granted by me at that time (Divorce No. 249 of 1971). I have verified from my notes that I made a finding then that she had in fact made out a substantial case of cruelty. She had also filed a discretionary statement regarding her adultery with the male petitioner. I exercised my discretion in her favour and gave her custody of the child as well.

No application for access to the child was ever made by the natural father although he was aware of the divorce. He has therefore allowed his desires, as presently expressed, to be frustrated when it was open to him to apply to the court for access rights. He drifted away from his daughter whom he has hardly seen since 1971.

The girl has been living with the petitioners since 1971 although she is at present away on holiday abroad with her mother. She seems to be living quite happily with the petitioners and has been attending a good school. There is no doubt that the male petitioner is a good provider and that if one considers the position from the point of view of the welfare of the child it would be in her best interests to be adopted by the petitioners, one of whom is her own natural mother. The male petitioner is not living in sin, as he did earlier from 1971 onwards, with the natural mother. He has seen fit to regularise his relationship with her by marrying her in 1973 after the decree was made absolute. The child has all along been with them both. Both counsel on behalf of the Attorney-General as well as the Assistant Director of Social Welfare are satisfied that the means and the status of the petitioners will enable them to bring up the child suitably and that she will benefit under their care.

Despite the full report of the investigator, Mr. Teo, which records his comments on the facts he elicited during his investigations from all the parties and others, some of which may appear adverse to the application by the petitioners that the consent of the natural father should be dispensed with I have, nevertheless, come to the conclusion, having regard to all the circumstances of the case, that such consent should be dispensed with as there are important and serious reasons why such consent should be dispensed with. Counsel for the Attorney-General took the stand that the natural father's consent should be dispensed with and although I am not necessarily bound to act on his views alone I am inclined to agree with him after considering all the circumstances of the case and hearing lengthy addresses from counsel for the parties thereon.

Counsel for the natural father contended that it was reasonable on the part of his client to withhold his consent and cited a recent English decision in support of his submission that his client should not be deprived of his rights as a father (See *Re W (an infant)*[1]). Counsel said that the natural father may find it necessary to exercise them if, for example, when the child is older and more mature, she should decide in the light of future circumstances to re-establish herself with her natural father rather than to continue to remain a daughter of the male petitioner should the petitioners succeed. Counsel stressed that it was only in exceptional circumstances that the course should be taken of dispensing with the consent of the natural father with which proposition no one can disagree.

I am informed that this is the first case of its kind in Singapore and that my decision may well have far-reaching consequences. Each case, of course, depends on its own particular facts. In the United Kingdom, where such cases are not so rare, Parliament has seen fit to amend legislation such as that contained in the Adoption Act, 1926 by subsequent Acts requiring the court, *inter alia*, to be satisfied that the consent of the natural father or mother or both is being unreasonably withheld thereby altering the approach to these cases from one involving the welfare of the child as the first and paramount consideration to one where its welfare is only of secondary importance.

As Devlin J. (as he then was) said in *Hitchcock* v. *W.B.*[2]: —

> "On the question whether 'consent is unreasonably withheld', within the meaning of section 3(1)(c) of the Act of 1950, I think it is significant that section 3(1)(c) is to be contrasted with the proviso to section 2(3) of the Adoption of Children Act, 1926, which provided that:
>
> '... the court may dispense with any consent required by this sub-section if satisfied that the person whose consent is to be dispensed with ... is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.'
>
> That proviso gave an absolute discretion to the court, and, in exercising their powers under a section so worded, the justices would, no doubt, be right in regarding the welfare of the child as the matter of paramount importance. But section 3(1)(c) of the Act of 1950 is worded differently. It is unnecessary to speculate on the reasons for the change. The legislature may have considered that, while the welfare of the child is in the end of paramount importance, it would be best for the child to remain with his natural parents, if one of them wanted him. However that may be, it is plain that the prescribed test is no longer the welfare of the child. Attention has been drawn by Lord Goddard, C.J., to the nature of section 3(1) of the Act of 1950 and to the fact that the circumstances in which consent may be dispensed with under section 3(1)(a) and section 3(1)(b) are where a parent has, by his own act of parental misbehaviour, disqualified himself from having his refusal of consent attended to. It is in that light that one has to construe the sub-section, and, in particular, the words 'that his consent is unreasonably withheld', in section 3(1)(c). In my judgment, the test to be applied for the purpose of section 3(1)(c) is that: Is the attitude of a father, in refusing his consent, unreasonable, i.e., is the father being unreasonable as a father? If it is possible to say that a father could reasonably come to the conclusion that his child ought not to be adopted, it seems to me impossible to hold that his consent is unreasonably withheld. The welfare of the child is, of course, of indirect importance, because a father who has no regard for the welfare of his child in reaching such a decision is not reasonable, but the child's welfare is no longer the sole test."

Our law, though amended in 1972, still follows the lines of the English Act of 1926 by giving an absolute discretion to the court to dispense with such consent if in all the circumstances of the case it considers that this should be done. In this respect the position in Singapore is akin to the position under the English Act of 1926 and the position in British Columbia which has a similar provision (See *Re Adoption Nos. 60-09-097014 and 62-09-027718*[3]) — a copy of

which has been submitted by counsel for the petitioners).

It therefore behoves the court to exercise the discretion entrusted to it after a full and careful consideration of all circumstances of the case including the welfare of the child which, though not necessarily the sole consideration, is one of prime importance.

The English cases after 1950 which were cited to me, whilst of considerable guidance in the approach to these matters are not directly concerned with the issue before me. I am not solely concerned with an issue as to whether the natural father's consent is being unreasonably withheld although this is not an entirely irrelevant factor in determining whether, in all the circumstances, I should dispense with such consent. It is clear that the word "unreasonably" should be viewed objectively (and not subjectively) on the basis of what a reasonable parent placed in the particular situation posed by the facts and circumstances of the case would do in the interests of the child.

In these cases the courts are faced with the painful duty of having to make what may seem disagreeable decisions but the task must nevertheless be faced fairly and squarely in accordance with the needs of the particular case in the light of the legislation that applies.

As I have said, our law is contained in the proviso to section 3(4) and, in particular, paragraph (c) thereof.

The first thing to bear in mind about this case is that it is based on facts of a confidential nature and, unless the court otherwise directs, such cases are heard in camera as this one was.

Having regard to the wealth of information contained in the record before me and the attitude of all counsel who addressed me fully I have not found it essential to interview any of the parties or to see the child. I invited counsel concerned to call any of the deponents if necessary for cross-examination but they decided not to do so. The investigator from the Social Welfare Department has, as I have said filed a detailed and careful report. Although it contains comments which include some inferences or conclusions of fact which I have not necessarily accepted as being necessarily adverse to the application for dispensation of consent, having regard to the picture as a whole which emerges from all the primary facts, it has been of considerable assistance to me. Counsel for the Attorney-General informed me that the investigator could throw no further light as to facts other than what is already contained in his report and that each of the interested parties seems to have put forward only that version which is most favourable to his or her own case, as is not unusual.

One appreciates the investigator's difficulties bearing in mind that the ultimate decision on the facts including the weight to be attached to each set of facts before that decision is made lies not with the investigator but with the court.

The undisputed facts seem to be quite clear.

The natural father and natural mother are, for obvious reasons, at arm's length. Whatever battle may rage between them as a result of recriminations on the part of one in respect of the other, the fact remains that the mother has succeeded in divorcing the father on the ground of cruelty which I, myself, found amply proved in the divorce proceedings in 1972. The child has been largely with the mother and/or her maternal grandmother for a considerable period since the time when cruelty caused the mother to leave the matrimonial home with her child.

The natural father has, in my judgment, been a drug addict since marriage and has been the architect of a broken home. He has been a rolling stone so far as concerns his employment for a long time and has never been a steady provider for his child since her birth. She was an unwanted child in the first place. He has allowed the petitioners solely to provide for her at least since 1971 and the child is at last in an atmosphere of comparative stability so far as concerns her maintenance, education and general well-being notwithstanding the mother's previous adulterous relationship with the male petitioner. This she has made no attempt to conceal. Having regard to the cruel treatment to which she had been constantly exposed, the final nervous breakdown in 1971 undoubtedly contributed to her finding it necessary to seek stability for herself and her child in the male petitioner's home however unwise such a course may have been when viewed on moral grounds. The male petitioner deserves some credit and not moral censure alone for his conduct in the matter. Soon after the decree was made absolute, he married the natural mother to stabilise the mother and child of this broken home.

The natural father went to prison for 6 months on a second conviction for a drugs offence in 1973 and there is nothing on the record to indicate that any permanent or even a partial cure has been effected.

I find that the natural father has shown himself completely unfit to continue in the role of a father of whom his child can ever be justifiably proud. His withholding of his consent on the ground that he desires to assert his rights as a father in the nebulous future, if necessary, without any satisfactory or concrete proposals, at the present time, as to providing a stable future for his daughter with any assurance that he will always be able to do so, compels me to the decision, painful as it is, that he has forfeited such rights. I accordingly decide that in all the circumstances of this case his consent should be dispensed with. All he says is that if the petitioners find it embarrassing to have custody alone he is prepared to provide such custody through his mother.

It follows that the petitioners succeed in their petition for adoption of the infant in question.

There will accordingly be an order in terms of the application for dispensation of the natural father's consent and of the Petition with costs.

Application granted.

Solicitors: *Eugene Phoa & Co.; Chor Pee & Hin Hiong.*